

8/5/09

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,	:	No. 1:09CR97-2(MRM)
	:	
Plaintiff,	:	PLEA AGREEMENT
	:	
vs.	:	
	:	
CHARLES CLINTON BOYD,	:	
	:	
Defendant.	:	
	:	

This constitutes the plea agreement between the defendant, **CHARLES CLINTON BOYD** (“Defendant”), individually and through his attorney, Diane M. Menashe Esq., and the United States Attorney’s Office for the Southern District of Ohio (“USAO”), through the undersigned Assistant United States Attorney, (collectively, “the parties”).

1. Defendant understands that he has the right to have this case heard before a United States District Judge and Defendant knowingly waives and gives up that right and consents to all proceedings in this case, including but not limited to plea, sentencing, and judgment, taking place before a trial, judgement, and sentencing before a United States Magistrate Judge.

2. The parties agree and stipulate that this case is properly before the United States District Court, in the Western Division of the Southern District of Ohio, in Dayton, Ohio.

PLEA

3. Defendant agrees to plead guilty to Counts One and Two of the Information filed herein. Counts One and Two of the Information filed in this case each stem from two distinct violations of the Lacey Act. Specifically, each count of the Information charges the Defendant with knowingly purchasing and transporting in interstate commerce wildlife that the defendant, in the exercise of due care, should have known was taken, possessed, transported, or sold in violation and in a manner of unlawful under the laws and regulations of the United States, specifically, Title 9, Code of Federal Regulations ("C.F.R."), §§ 77.27 and 77.32(c), all in violation of 16 U.S.C. §§ 3372(a)(1) and 3373(d)(2). Defendant admits that he is, in fact, guilty of the offenses charged in the Information, and that the Statement of Facts, which is attached hereto as "Exhibit A" and incorporated herein by reference as though set forth in full, is true and correct.

WAIVER OF TRIAL AND ACKNOWLEDGMENT OF RIGHT TO COUNSEL

4. Defendant understands that he has the following rights:

- to plead not guilty, or having already so pleaded, to persist in that plea;
- to a jury trial;
- at trial, to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

Defendant further understands that if the Court accepts his guilty pleas pursuant to this plea agreement, there will be no trial and he waives these trial rights.

5. Defendant further understands that he has the right to be represented by counsel—and if necessary have the court appoint counsel—at every stage of these proceedings.

STATUTORY PENALTIES AND SENTENCING

6. Defendant further understands that:

- a) the statutory maximum penalties for a violation of 16 U.S.C. 3372(a)(1) are: a one year term of imprisonment and a one year period of supervised release or alternatively five years probation; and a fine of \$100,000.
- (b) there is no agreement as to what Defendant's sentence in this case will be, and the Court will determine Defendant's sentence. Defendant further understands that in determining Defendant's sentence, the Court has an obligation to calculate the applicable Sentencing Guidelines range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a).
- (c) the Court has an obligation to impose a special assessment of \$25.00 for each count of conviction as required in 18 U.S.C. § 3013, for a total of \$50.00 in this case. Further, the Court has the authority to order restitution and forfeiture.
- (d) supervised release is a period of time following imprisonment during which Defendant will be subject to various restrictions and requirements. Defendant further understands that if he violates one or more of the conditions of any supervised release imposed, Defendant may be returned to prison for all or part of the term of supervised release.

- (e) the U.S. Probation Office (USPO) will conduct a pre-sentence investigation and will recommend to the Court an advisory Sentencing Guidelines range, including, among other matters, a Base Offense Level, specific offense characteristics, adjustments and any departures. The parties reserve the right to argue and offer supporting evidence as to the Sentencing Guidelines factors, including but not limited to a Base Offense Level, specific offense characteristics, adjustments and departures, as well as offer evidence and argument otherwise relating to sentencing, including, but not limited to the factors set forth in 18 U.S.C. § 3553(a). The USPO's recommendations do not bind the Court, and the parties' recommendations do not bind either the Court or the USPO.
- (f) the Sentencing Guidelines are advisory, and the Court may impose a sentence up to the maximum penalties authorized by law.

AGREED RECOMMENDATIONS

7. The parties agree to recommend that the following terms comprise part of an appropriate disposition of this case. Defendant understands that the Court is not bound by the following recommendations. In the event that the Court does not accept these recommendations, Defendant fully understands that he does not have the right to withdraw his guilty plea:

- (a) **Restitution.** Pursuant to 18 U.S.C. § 3663, the Defendant agrees to make full restitution to the Ohio Non-Game Endangered Wildlife Fund in the amount of \$4,582.44 jointly and severally with Earl Boyd. Such restitution is intended to cover all costs incurred by the State of Ohio or its contractors to address and remedy the deer herd brought to Ohio by Defendant and others, including but not

limited to the containment, removal, transportation, monitoring, medical or other testing, treatment for disease or injury, euthanasia, implementation for disease transmission prevention methods, and any other costs related to the herd of any Ohio deer impacted or potentially impacted therefrom.

- (b) **No deer propagation during probation.** Defendant agrees that he will not engage in any aspects of the business of deer propagation for a period of time determined by the Court as a condition of any sentence of probation;

DEFENDANT'S ADDITIONAL OBLIGATIONS

8. Defendant further agrees:

- (a) to pay \$50 in special assessments in this case at or before the time of sentencing.
- (b) not to withdraw or seek to withdraw his guilty pleas in this case or otherwise seek to have them set aside.
- (c) that if he does not plead guilty pursuant to this plea agreement, if he withdraws or seeks to withdraw one or more of his guilty pleas in this case or otherwise seeks to have one or more of them set aside, or if one or more of his guilty pleas in this case are withdrawn or set aside for any other reason:
- Defendant waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, and U.S.S.G. § 1B1.8(a);

- this plea agreement, evidence of the guilty pleas, as well as any statements made by Defendant (i) in the course of plea discussions, and (ii) in any proceeding under Rule 11 of the Federal Rules of Criminal Procedure, will be admissible against Defendant without limitation in any civil or criminal proceeding;
- Defendant waives all defenses based on the statute of limitations and the Speedy Trial Act as to any charges that are not time-barred as of the date that Defendant signs this plea agreement.

(d) to cooperate truthfully and completely with the Court, the USPO, and the United States Pretrial Services Office.

(e) to appear as ordered for all court appearances, comply with all conditions of bond, probation, and/or supervised release, and otherwise comply with the Court's orders and judgment in this case.

(f) not to commit any crime, and that nothing in this plea agreement authorizes Defendant to commit any crime.

WAIVER OF APPEAL AND COLLATERAL ATTACK

9. Defendant waives the right to challenge his convictions and sentences in this case, whether by direct appeal or collaterally to the extent allowed by law. This includes but is not limited to a waiver of any rights under 18 U.S.C. § 3742 and 28 U.S.C. § 2255.

THE USAO'S OBLIGATIONS

10. If Defendant complies fully with all his obligations under this plea agreement, the USAO agrees:

(a) not to file additional criminal charges against Defendant for criminal violations both (i) occurring in the Southern District of Ohio during the time period charged in the Information filed in this case, and (ii) arising out of the facts set forth in the attached Statement of Facts.

NO OTHER AGREEMENTS

11. Except as set forth herein, there are no promises, understandings or agreements between the USAO and Defendant or Defendant's counsel. This agreement binds only the USAO and does not bind any other federal, state or local prosecuting authority.


DEFENDANT'S ACKNOWLEDGMENT

12. By signing below, Defendant acknowledges that:

- he has carefully read and understands this plea agreement, and that he accepts this plea agreement because he is, in fact, guilty as charged;
- his guilty pleas pursuant this plea agreement are knowing and voluntary, without duress or coercion, of his own free will, and not the result of any force, threats, or promises (other than the promises in this plea agreement);

- he has conferred with his attorney regarding this plea agreement and the facts and circumstances of this case, including the applicable law and potential defenses, and that he is fully satisfied with the representation, advice, and other assistance of his attorney in this case.

GREGORY G. LOCKHART
United States Attorney


LAURA CLEMMENS
Assistant United States Attorney

9/29/09
Date


CHARLES CLINTON BOYD
Defendant

8-15-09
Date


DIANE MENASHE, ESQ.
Attorney for CHARLES CLINTON BOYD

8.14.09
Date

Exhibit A

STATEMENT OF FACTS FOR CHARLES CLINTON BOYD AND EARL A. BOYD

CHARLES CLINTON BOYD and EARL A. BOYD are owners of Ohio Whitetail Legends (“OWL”), a hunting preserve in Highland County, Ohio. In addition to propagating deer on-site in the approximately 200 acre hunting preserve, OWL purchases deer from other propagators both in Ohio and other states.

CHARLES CLINTON BOYD was responsible for finding deer from Ohio and other states, including Minnesota, to purchase for the preserve. CHARLES CLINTON BOYD would work with other deer propagators as well as individuals responsible for transporting such deer to the OWL preserve. CHARLES CLINTON BOYD was aware that any deer entering the OWL preserve from outside the state of Ohio need to have the proper veterinary certificates and ear tags at the time of arrival at the OWL preserve.

EARL A. BOYD was responsible for stocking the OWL preserve, and kept the propagation records for OWL as required by the state of Ohio. OWL has an Ohio Department of Natural Resources, Wild Animal Hunting Preserve License and a Wild Animal Propagation Permit, (“Ohio License”). Each holder of the Ohio License (which is required to raise/buy/sell pen raised deer) must keep written records of the total number of deer possessed at the time of application as well as the number subsequently propagated or acquired by purchase. Ohio Revised Code 1533.77. The records must also include the name and address of each person or corporation from whom the deer were purchased as well as the date of each transaction. EARL A. BOYD was aware that any deer entering the preserve from out of state needed to be tested for tuberculosis and accompanied by proper ear tags and a veterinarian’s certificate.

Beginning on or about September 7, 2005 and continuing through at least September 30 2006, CHARLES CLINTON BOYD and EARL A. BOYD made five separate purchases and

received five corresponding shipments of white-tailed deer from a known individual. CHARLES CLINTON BOYD and EARL A. BOYD met said known individual through another individual, a deer propagator from Minnesota, who also used the known individual to transport deer.

On or about September 7, 2005, the first shipment of eight white-tailed deer, transported by the known individual, arrived from Minnesota. All eight deer were accompanied by a proper veterinary certificate and ear tags noting a ship date of September 6, 2005. EARL A. BOYD properly documented the deer in the OWL propagation records. On August 29, 2005, OWL transferred \$16,000 by wire to the known individual and on September 7, 2005 OWL paid the known individual another \$2,125 by check. Of the \$16,000, \$14,825 was for first shipment and the remaining \$3,300 was left to pay for a second shipment of white-tailed deer.

On or about September 12, 2005, OWL received a second shipment of eight deer, three of which were from the known individual from Minnesota. Each of the known individual's deer had proper veterinary certificates and ear tags with a shipment date of September 12, 2005. EARL A. BOYD properly documented the deer in the OWL propagation records. OWL paid the known individual \$1,200 which was added to the \$3,300 credit from the first transaction. CHARLES CLINTON BOYD signed the receipt.

On or about October 22, 2005, OWL received a third shipment of eight white-tailed deer, from Minnesota from the known individual, arranged for by CHARLES CLINTON BOYD. For this shipment EARL A. BOYD listed only one deer in the OWL propagation records because the remaining seven deer were not properly certified by a veterinarian and/or displayed no ear tags. OWL paid Becker \$21,000 by check on the same day.

On or about November 2, 2005, CHARLES CLINTON BOYD arranged for a fourth shipment of white-tailed deer from the known individual. On or about the same date, OWL wired \$14,000 to the known individual for a shipment due on or about November 7, 2005 of an

unknown number of deer from Minnesota. EARL A. BOYD did not document any of the eight-deer received in the OWL propagation records because none of the deer had the proper veterinary certificate and/or displayed ear tags.

AGREED AND ACCEPTED:



CHARLES CLINTON BOYD
Defendant

8-15-09
Date